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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

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Carriage of the Transmissions
of Digital Television Broadcast Stations

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CS Docket No. 98-120

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To: The Commission - Mail Stop 1170

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. These Comments are filed by the **Community Broadcasters Association (CBA)** in response to the Commission's *Notice of Proposed Rule Making* ("NPRM") in the above-referenced proceeding, FCC 98-153, released July 10, 1998. CBA is the trade association of the nation's LPTV stations. CBA's members represent the most vigorous, fast-growing, and dynamic segment of today's broadcasting industry. These LPTV operators have built their stations often with their own hands, and virtually always with their own money, most times without bank financing. Their goals are to build viable businesses that serve their *local* communities. It is critical that the Commission take special care not to impose further handicaps or burdens on the LPTV industry in this proceeding, and indeed the Commission should seek opportunities to affirmatively improve the distribution of LPTV signals to the public, to preserve localism, diversity, and small business.^{1/} In particular, DTV must-carry obligations should not be structured so as to result in loss of existing carriage of LPTV stations or the prevention of future LPTV carriage; and a place on cable must be made for LPTV stations after they convert to digital operation.

^{1/} See Sec. 257 of the Communications Act, 47 U.S.C. §257.

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2. LPTV stations enjoy far fewer cable television must-carry rights than full power TV stations. Under Section 614(c) of the Communications Act,^{2/} LPTV stations have no must-carry rights at all in the top 160 Metropolitan Statistical Areas, and a cable system in any size market that is out of capacity must give priority to full power must-carry obligations over any LPTV must-carry obligations. Exercising even these limited must-carry rights is often the only way that qualified LPTV stations can obtain cable carriage that is often essential to survival in an environment where access to television receivers in a majority of households is through a wire controlled by a cable operator. Because of cable's bottleneck control over access to so many receivers, the limited must-carry rights held by certain LPTV stations must be preserved in the digital world.

3. In the past, CBA has supported the Commission's adoption of incentives for cable operators to carry LPTV stations on their systems, *e.g.*, subscriber rate increases for adding LPTV stations and the establishment of reasonable leased access channel rates. However, the Commission has not adopted CBA's cable proposals; and in practice, the cable industry has often resisted carrying LPTV stations except where the must-carry law compels carriage.^{3/} It is apparent, therefore, that laws and regulations will remain critical to achieving cable carriage of LPTV systems and preserving the local services that LPTV stations provide.

^{2/} 47 U.S.C. §614(c).

^{3/} There are exceptions, of course, where cable operators and LPTV stations have reached voluntary carriage agreements, but these sometimes involve payment of extremely high fees by LPTV stations that their full power competitors do not have to pay.

4. In the *Sixth Report and Order* in MM Docket 87-268^{4/} issued by the Commission last year, full power television licensees were obligated to broadcast digital signals and were each granted an additional channel to enable them to maintain both analog and digital service during a 10-year transition period. After the transition (currently set to end in 2006), each full power licensee will be required to relinquish either its current analog channel or the channel allocated to it in the *Sixth Report and Order*, at its option. After that time, digital signals will be broadcast on the remaining channel held by the licensee. Although LPTV licensees were not assigned a second channel for digital operation, the Commission provided for improved analog service by measuring their power in terms of effective radiated power rather than transmitter power output, and the Commission stated its intention to address the issue of LPTV digital operation in a future proceeding.^{5/}

5. The first issue, then, is what will happen to LPTV stations that are now carried on cable, whether through enforcement of must-carry rights or voluntary agreements, when cable systems begin carrying digital full power signals. If cable operators themselves convert to digital operation with the resulting multiplication of available channel capacity, there should be ample capacity for carriage of all local broadcast signals, both full and low power. But if cable operators convert DTV signals to analog for distribution to their subscribers, the question arises -- and is squarely raised in this proceeding -- of where extra channels will come from to carry full power stations' second channels. It is critical that these second channels not be obtained at the expense

^{4/} *Sixth Report and Order* in MM Docket 87-268, 12 FCC Rcd 14588 (1997).

^{5/} *Id.* at ¶147.

of displacing LPTV stations now being carried. To do so would be to sacrifice local service, not only because LPTV stations so often specialize in local service but because the early DTV programming is likely to be originated by national networks. Thus if the Commission orders carriage of DTV signals, it should do so in a manner that does not require a cable operator to act in a way that is contrary to its obligations under Section 614(c) of the Communications Act, and which allows a cable system voluntarily to carry an LPTV station if it finds the station's programming to be of interest to its subscribers.

6. Second, the Commission should preserve a place for future digital LPTV stations in the cable world, by directing cable systems that distribute their signals digitally to digital receivers in the home, and which have sufficient channel capacity, to include digital LPTV signals within the one-third of their channel capacity that Section 614 requires be made available for must-carry broadcast signals. The Commission has a significant opportunity here to bring new local and specialized services to the public, as well as to promote small business enterprises;^{6/} and it should not pass that opportunity by.

7. There are also positive things the Commission can do for LPTV stations that do not achieve cable carriage. With respect to the Commission's specific proposals raised in the NPRM, CBA supports the idea of requiring that A/B switches be built into television sets and VCRs to provide easy access for viewers to LPTV and other broadcast stations that are not carried on cable. CBA also supports the position that "no ancillary or supplementary service shall have any right

^{6/} The Commission has recognized in its many rule makings on awarding licenses by competitive bidding that promoting ownership opportunities for small businesses also promotes ownership opportunities for members of minority groups and women.

to carriage under section 614 or 615" of the Communications Act.^{7/} Congress clearly did not intend to confer such rights; thus they should not be granted at the expense of carriage of LPTV stations.^{8/}

8. The Commission should also continue its current policy allowing cable system operators to carry the signals of qualified LPTV stations on channels reserved for public, educational or governmental ("PEG") programming to the extent that the PEG channels are not being used by public, educational or governmental entities. There is no reason this policy should be altered with the coming of DTV, and preserving it provides the possibility for carriage of LPTV stations that might not otherwise be carried on cable.

9. To the extent that the Commission affords small cable systems relief from carriage of DTV signals, it should not do so to the exclusion of LPTV signals. If the Commission finds that small cable systems should be required to carry the digital signals of full power television stations that have must-carry rights, the result should be no different for LPTV stations that have must-carry rights on the same systems.

10. The Commission should maintain, in the digital world, the current requirement that broadcast signals, including LPTV signals, that qualify for must-carry be placed on a cable system's basic tier. If this requirement is modified, cable systems could easily move broadcast stations to another tier to which fewer viewers subscribe; as a consequence, subscribers will either lose access to valuable local television signals or have to pay more to receive them than they do

^{7/} 47 U.S.C. § 336(b)(3).

^{8/} See Telecommunications Act of 1996, Conference Report, 104th Cong., 2d Sess., Report 104-230 at 161.

now. To the extent that the Commission chooses to allow carriage of broadcast signals on upper tiers of a system based on lack of available channel space on the basic tier, full power and must-carry LPTV stations should be treated the same in determining which stations are moved, and any such signals should be required to be moved back to the basic tier at the end of the digital transition period.


11. Although the must-carry rights of LPTV stations are currently very limited, such rights are vital to the LPTV stations that have them, and they must not be discarded at this time in the face of digital television. The cable carriage problems facing LPTV stations will not disappear in the age of DTV and instead will worsen if the Commission does not maintain must-carry rights for LPTV stations.

12. CBA anticipates that some elements of both the full power television industry and the cable industry will urge the Commission to eschew regulation and to let the industries work things out privately. CBA is aware that private industry discussions are taking place; however, the LPTV industry has not been a party to these discussions, and it is highly unlikely that the negotiating parties will take LPTV into account at all in any agreement they reach. The Commission's obligation is to serve the needs of the *public*; and to the extent that private industry neglects an important aspect of those needs, the Commission must intervene. Thus the

Commission should not step away from the table at this time but should either continue to directly regulate cable carriage of LPTV stations in the digital era or not sanction any industry agreement that neglects the importance of LPTV.

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